

IVAN VERNOD CLEVELAND,	)	No. C 07-2809 JF (PR)
	)	
Plaintiff,	)	ORDER DENYING MOTION
	)	FOR APPOINTMENT OF
vs.	)	COUNSEL WITHOUT
	)	PREJUDICE
BEN CURRY , Warden, et al.,	)	
	)	
Defendants.	)	
	)	
	)	(Docket No. 8)

## DISCUSSION

Plaintiff has filed a motion for appointment of counsel. Plaintiff contends that appointment of counsel is necessary because he is indigent; he cannot afford to hire counsel; and the issues involved are complex. Plaintiff contends that it is difficult for him to litigate this case due to his limited knowledge of the law and the limited availability of legal materials because he is incarcerated. See Plaintiff's Mot. at 1-2.

1 However, there is no constitutional right to counsel in a civil case. Lassiter v.  
2 Dep't of Social Services, 452 U.S. 18, 25 (1981). 28 U.S.C. § 1915 confers on a district  
3 court only the power to “request” that counsel represent a litigant who is proceeding in  
4 forma pauperis. 28 U.S.C. § 1915(e)(1). This does not give the courts the power to make  
5 “coercive appointments of counsel.” Mallard v. United States Dist. Court, 490 U.S. 296,  
6 310 (1989).

7 The Court may ask counsel to represent an indigent litigant under § 1915 only in  
8 “exceptional circumstances,” the determination of which requires an evaluation of both  
9 (1) the likelihood of success on the merits and (2) the ability of the Plaintiff to articulate  
10 his claims pro se in light of the complexity of the legal issues involved. See Rand v.  
11 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997); Terrell v. Brewer, 935 F.2d 1015, 1017  
12 (9th Cir. 1991); Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986). Both of  
13 these factors must be viewed together before reaching a decision on a request for counsel  
14 under § 1915. See id. Neither the need for discovery, nor the fact that the pro se litigant  
15 would be better served with the assistance of counsel, necessarily qualify the issues  
16 involved as complex. See Rand, 113 F.3d at 1525 (where Plaintiff’s pursuit of discovery  
17 was comprehensive and focused and his papers were generally articulate and organized,  
18 district Court did not abuse discretion in denying request for counsel).

19 As the Court has not yet reviewed the merits of Plaintiff’s complaint pursuant to  
20 28 U.S.C. § 1915 to determine whether the claims are cognizable, the Court concludes  
21 that appointment of counsel is not necessary at this time. Accordingly, Plaintiff’s motion  
22 for appointment of counsel (docket no. 8) is DENIED without prejudice. Plaintiff may  
23 renew his request for counsel at a later stage of the proceedings, if appropriate.

## 24 CONCLUSION

25 Plaintiff’s motion for appointment of counsel (docket no. 8) is DENIED without  
26 prejudice. The Court will review the merits of the complaint in a separate written order.  
27 It is Plaintiff’s responsibility to prosecute this case. Plaintiff must keep the Court  
28 informed of any change of address by filing a separate paper captioned “Notice of Change

1 of Address.” He must comply with the Court’s orders in a timely fashion. Failure to do  
2 so may result in the dismissal of this action for failure to prosecute pursuant to Federal  
3 Rule of Civil Procedure 41(b).

4 IT IS SO ORDERED.

5 DATED: 8/27/07

  
JEREMY FOGEL  
United States District Judge

1 A copy of this ruling was mailed to the following:

2 Ivan Vernord Cleveland  
3 H-60545  
4 CTF -Soledad  
5 P.O. Box 689  
6 Soledad, CA 93960-0689  
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